

After this morning, I can happily report we are finally moving forward and that two excellent judicial candidates have been confirmed.

Let me also add that while I have been the Senator of the same party as the President, I have invited and encouraged Senator GORTON to participate in judicial nominations. I recognize this is a tremendous break in tradition, but I know our citizens are best served when we work together.

I intend to continue working with Senator GORTON to find the very best and most able members of the Washington bar to recommend to President Clinton. I will fight to ensure our citizens have their day in court and that justice is not denied because nominations are delayed.

Mr. President, I appreciate the endorsement of my colleagues for Ms. McKeown and Mr. Shea. There are many other qualified judges waiting to move through the process. I urge the Senate to move quickly to hear and confirm them so the crisis our judiciary faces will come to an end.

Mr. LEAHY. Mr. President, I wish to applaud the distinguished Senator from Washington State. Senator MURRAY has stated the reasons why the Senate voted the right way on Margaret McKeown and on Ed Shea. I would also note for the record that the Senator from Washington has been extraordinarily diligent in working very hard for these two highly qualified nominees. I know the frustration she has felt with the delay, especially on Margaret McKeown and with so many vacancies on the Ninth Circuit and given that this has been 2 years—in fact, 2 years this Sunday.

This delay is the result of a process that has become a little bit crazy. I commend the distinguished Senator, and I thank her for her help on this. I think it would have been impossible for us to be here for this vote without her help, and I applaud her for that.

Mr. GORTON. Mr. President, I am pleased to congratulate the two judicial nominees from Washington state. The federal bench will be enriched by the addition of Margaret McKeown to the Ninth Circuit Court of Appeals, as it will by Edward Shea's presence on federal district court for the Eastern District of Washington.

Both Margaret McKeown and Edward Shea are deservedly respected within the legal community and in the community at large, and well qualified to perform the important jobs for which they have been chosen.

Ed Shea has been in private practice in Pasco, Washington for many years. He has handled a wide range of cases, both civil and criminal, and his experience will have prepared him well for the job he's about to undertake. As testament to the respect he commands within the Washington legal community, Ed served as President of the Washington State Bar Association in 1996. Equally impressive as his commitment to his profession is his commit-

ment to his community. Over the years, he has contributed his time and talent to a host of worthy causes, including the March of Dimes, the Tri-Cities Sexual Assault Response Center, and the Association of Retarded Citizens.

Margaret McKeown also comes to the bench from private practice. She is a high technology litigator of national repute, with a particular expertise in antitrust and intellectual property. She was also the first woman partner at the prestigious Seattle law firm, Perkins Coie, where she practices today. Her remarkable intellect, and the accomplishments that evidence speak to her ability to perform the job with which she has been entrusted. There is no question that Margaret McKeown is familiar with the law. But, as her statement to the graduating class of the University of Washington Law School last year reflects, in this case familiarity did not breed contempt. Her mastery and understanding of the legal process rang through her commencement address. As did her continued respect for the law. She also urged the new lawyers to bear in mind her own formula for survival, a formula composed of five elements: humor, humility, hubris, humanity and home. The formula is one that has made Margaret an excellent lawyer. I am confident it will make her an excellent judge.

I thank my colleagues for joining me in supporting both of these nominees. And I congratulate them again.

THE NOMINATION OF MARGARET MCKEOWN AND THE JUDICIAL EMERGENCY AMONG THE FEDERAL COURTS OF APPEALS

Mr. LEAHY. Mr. President, let me speak a little bit about Margaret McKeown. She was reported favorably by the Judiciary Committee on a vote of 16 to 2. She has the support of Chairman HATCH, a number of Republican Senators, is supported by both Senators from her State. Why this was held up for 2 years, I cannot understand. And then she is confirmed 80 to 11. How many of us have ever won an election with those kinds of percentages? Yet, apparently somebody held her up for 2 years because she was supposed to be controversial. How controversial is 80 to 11? Those are pretty good numbers. Perhaps her secret critics will explain their views, the reason she has been held up for 2 years.

I have been urging action on judicial nominees for many months. This week, faced with 5 continuing vacancies on a 13-member court, Chief Judge Winter of the United States Court of Appeals for the Second Circuit certified a "judicial emergency" and took the unprecedented step of authorizing panels including only one Second Circuit judge and two visiting judges. In addition he has had to cancel hearings.

The Judiciary Committee has reported to the Senate the nomination of

Judge Sonia Sotomayor to the Second Circuit, but that nomination continues to sit on the Senate calendar. This is another woman who has sat here and had to wait and wait and wait, while the Senate holds her up. Her nomination was received back in June 1997. She was finally favorably reported by a committee vote of 16 to 2—pretty good odds. She is strongly supported by both New York Senators, one Republican, one Democrat. But the nomination continues to languish without consideration. And three more Second Circuit nominees are pending before the Judiciary Committee, and await their confirmation hearings.

I mention the Second Circuit because that is my Circuit. It is the Circuit to which my State resides. I have been urging action on the nominees for this Circuit for many months. The Senate is failing in its obligations to the people of the Second Circuit—to the people of New York, Connecticut and Vermont. We should call an end to this stall and take action. We should consider the nomination of Judge Sotomayor. We should do it today. We should hold hearings on the three other Second Circuit nominees next week and confirm them before the upcoming recess. Our delay is inflicting harm and giving proof to the warning that the Chief Justice of the U.S. Supreme Court gave in his 1997 Year End Report that continuing vacancies would harm the administration of justice. I urge the Republican leadership to proceed now.

Earlier this week, the distinguished majority leader indicated that he feels he has proceeded too quickly with respect to judicial nominations. I strongly disagree. No reference to the number of judges the Senate has begrudgingly confirmed over the past 2 years excuses the delay on any of the nominees pending on the Senate Calendar. There is no excuse or justification for the judicial emergency the Senate is inflicting on the Second Circuit.

The distinguished majority leader says there is no clamor for Federal judges. I recognize that there are no vacancies on the Federal bench in Mississippi, but there are numerous, long-standing vacancies in other places, vacancies that are harming the Federal administration of justice.

The people and businesses in the Second Circuit and other circuits and districts need additional Federal judges. Indeed, the Judicial Conference of the United States recommends that in addition to the almost 80 vacancies that need to be filled, the Congress authorize an additional 55 judgeships throughout the country, as set forth in S.678, the Federal Judgeship Act that I introduced last year.

Must we wait for the administration of justice to disintegrate further before the Senate will take this crisis seriously and act on the judicial nominees pending before us? I hope not.

We are sworn to uphold the Constitution, we are sworn to uphold the laws,

and we are paid pretty well to do that. We are failing our oath and we are failing the job the taxpayers of this country pay us to do.

CONFIRMATION OF EDWARD F. SHEA

Mr. LEAHY. Mr. President, I am delighted to see the Senate confirm Ed Shea as a Federal District Judge. I attended his confirmation hearing back on February 4 and found him to be all that his supporters and friends had said he would be. I know that he has the support of the Senators from the State of Washington. He also has the strong support of this Senator from Vermont. Ed Shea was nominated last September for a vacancy that occurred in 1996, over 15 months ago. Mr. Shea was reported by the Judiciary Committee without dissent and without objection. He was rated qualified for this position by the American Bar Association. I spoke of his nomination last week and am now delighted to see this nomination considered by the Senate.

With this confirmation the Senate will have acted favorably on only 14 nominees this year. I am glad that Margaret McKeown is luck number 13 and Ed Shea is number 14, but remain concerned for the other nominees who have been unlucky and remain stalled on the Senate calendar.

I have tried to bring to the attention of the Republican leadership the need to consider and confirm the two judicial nominees for District Courts in Illinois who have been languishing on the Senate calendar without action for the last five months.

It is time for the Senate to consider the nominations of Patrick Murphy and Judge Michael McCuskey. The Senate Judiciary Committee unanimously reported these two nominations to the full Senate on November 6, 1997. Their confirmation are desperately needed to help end the vacancy crisis in the District Courts of Illinois.

Pat Murphy is an outstanding judicial nominee. He has practiced law in the State of Illinois for 20 years as a trial lawyer and tried about 250 cases to verdict or judgment as sole counsel. During his legal career, Mr. Murphy has made an extensive commitment to pro bono service—dedicating approximately 20 percent of his working time to representing disadvantaged clients in his community. For instance, Pat Murphy has served as the court-appointed guardian to a disabled minor since 1990, without taking any fee for his services. The American Bar Association recognized this extensive legal experience when it rated him as qualified for this nomination. Mr. Murphy also served his country with distinction as a Marine during the Vietnam War.

Judge Michael McCuskey is also an outstanding judicial nominee. Judge McCuskey served as a Public Defender for Marshall County in Lacon, IL from

1976 to 1988. In 1988, he left the Public Defender's office and the law firm, Pace, McCuskey and Galley to sit on the bench in the 10th Judicial Circuit in Peoria, IL. He has served as a judge of the Third District Appellate Court of Illinois since his election in 1990.

The American Bar Association recognized his stellar qualifications by giving Judge McCuskey its highest rating of well-qualified for this nomination.

The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing more critical by the day. This is especially true in the Central and Southern District Courts of Illinois, where these outstanding nominees will serve once they are confirmed. Indeed, in the Southern District of Illinois, where Pat Murphy will serve if his nomination is ever voted on by the full Senate, Chief Judge Gilbert has reported that his docket has been so burdened with criminal cases that he went for a year without having a hearing in a civil case. In 1996, 88 percent of the cases filed in all federal trial courts were civil, while 12 percent were criminal. But in the Southern District of Illinois, not one of those civil cases was heard by Chief Judge Gilbert.

The Chief Justice of the United States Supreme Court has called the rising number of vacancies "the most immediate problem we face in the federal judiciary." There is no excuse for the Senate's delay in considering these two fine nominees for Districts with judicial emergency vacancies.

I have urged those who have been stalling the consideration of the President's judicial nominations to reconsider and to work with us to have the Judiciary Committee and the Senate fulfil its constitutional responsibility. Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges.

I hope that the Majority Leader will soon set a date certain to consider the nominations of G. Patrick Murphy and Judge Michael McCuskey.

These nominees may well be a case in which a secret hold by one Senator is delaying Senate action. I recall receiving a Dear Colleague letter from the Majority Leader in January 1997, the first day of this Congress. In that letter he proposed to address the frustrations with the hold system and what he termed "a correction." The letter goes on to describe the hold as "a request for notification of or protection on an unanimous consent request or proposed time agreement." The Majority Leader advised a Senator placing a hold "should understand that he . . . may have to come to the floor to express his objection after being notified of the intention to move the matter to which he objects."

I also recall last summer when the nomination of Joel Klein to be the As-

sistant Attorney General for the Antitrust Division was a source of some controversy. I recall then that the Majority Leader proceeded to consideration of that nomination and allowed opponents to debate their concerns and the Senate was able to proceed to a vote and to Mr. Klein's confirmation.

I hope that model will be utilized without further delay in connection with the Murphy and McCuskey nominations. These nominees are strongly supported by their home State Senators. Any Senator outside those Districts who wishes to oppose, speak against or vote no for any reason or no reason is free to do so. What we need to find a way to overcome is the veto of these nominations by a single Senator when a majority of the United States Senate is prepared to confirm them.

We are falling farther and farther behind the pace the Senate established in the last nine weeks of last year. When the Chief Justice of the United States Supreme Court wrote in his 1997 Year End Report that "some current nominees have been waiting a considerable time for a . . . final floor vote" he could have been referring to Patrick Murphy, Judge Michael McCuskey, Margaret McKeown and Judge Sonia Sotomayor.

Nine months should be more than a sufficient time for the Senate to complete its review of these nominees. During the four years of the Bush Administration, only three confirmations took as long as nine months. Last year, 10 of the 36 judges confirmed took nine months or more and many took as long as a year and one-half. So far this year, Judge Ann Aiken, Judge Margaret Morrow, and Judge Hilda Tagle have taken 21 months, 26 months and 31 months respectively. Margaret McKeown's nomination has already been pending for 24 months. Judge Sotomayor's nomination has already been pending for 9 months. Pat Murphy's and Judge McCuskey's nominations have already been pending for 8 months. The average number of days to consider nominees used to be between 50 and 90, it rose last year to over 200 and this year stands at over 300 days from nomination to confirmation. That is too long and does a disservice to our Federal Courts.

I urge the Republican leadership to proceed to consideration of each of the judicial nominees pending on the Senate calendar without further delay.

SPECIAL PROSECUTOR STARR

Mr. LEAHY. Mr. President, every week I wonder just what new step the special prosecutor, Mr. Starr, will find himself carrying out, and each week it seems he does not disappoint.

One week, we will recall, a citizen had the temerity to ask why Prosecutor Starr was using the results of an illegal wiretap, something that had been reported in the press that, without a doubt, he was using an illegal—illegal—wiretap. This citizen had the audacity to question Mr. Starr. Of course,